

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

**IN THE MATTER OF:**

<b>DR Horton Inc. (DR Horton)</b>	)	<b>Complaint No. R4-2004-0064</b>
<b>28009 Smyth Drive</b>	)	<b>For</b>
<b>Valencia, CA 91355</b>	)	<b>Administrative Civil Liability</b>

**DR HORTON IS HEREBY GIVEN NOTICE THAT:**

1. DR Horton is alleged to have violated requirements contained in State Water Resources Control Board Order No. 99-08-DWQ, [NPDES Permit No. CAS000002] (hereinafter General Permit) for which the Regional Water Quality Control Board, Los Angeles Region (Regional Board) may impose civil liability under §13385 of the California Water Code (CWC). The General Permit regulates discharges of storm water associated with construction activities.
2. A hearing concerning this Complaint will be held before the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on DR Horton. DR Horton will be notified at least ten days in advance of the date, time and place of the hearing. DR Horton or DR Horton's representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of a greater judicial civil liability.
4. In the event that DR Horton fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement.

**THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS IN THIS MATTER:**

**BACKGROUND**

5. Storm water runoff from DR Horton's 78.9-acre construction site (72 acres disturbed area), WDID No. 4 19 C 325258, located between Sierra Highway and Antelope Freeway at the terminus of Golden Valley Road, immediately north of Green Mountain Road, City of Santa Clarita, is regulated under the General Permit. On December 22, 2003, the State

Board processed DR Horton's Notice of Intent (NOI), signed by Mr. Kyle Milano, to comply with the terms of the General Permit.

6. In its NOI, DR Horton stated that grading would be completed July 1, 2004, and that project completion would occur by September 2005.

#### ALLEGED VIOLATIONS

7. DR Horton is alleged to have violated the following 3 provisions of the General Permit:
  - I. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
    1. Objectives. DR Horton failed to develop and implement a complete Storm Water Pollution Prevention Plan (SWPPP) to meet requirements in SECTIONS A.1 through C.10.
  - II. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
    6. Erosion Control. DR Horton failed to implement erosion control on 15% of disturbed slopes.
  - III. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
    8. Sediment Control. DR Horton failed to implement sediment control along the construction site's perimeters and at all operational inlets to the storm drain system; and
  - IV. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
    11. Maintenance, Inspection, and Repair. DR Horton failed to maintain and repair the construction site's Best Management Practices (BMPs).
8. On March 9, 2004, during a storm water inspection of DR Horton's construction project, Regional Board staff observed:
  - a. §A.5. (b) - (Pollutant Source and BMP Identification): DR Horton's SWPPP did not include drainage patterns and storage areas.
  - b. §A.6- (Erosion Control): BMPs were not effectively implemented to stabilize soil on all slopes.
  - c. §A.8- (Sediment Control): BMPs were not effectively implemented at all appropriate locations along the site perimeter and at all operational inlets to the storm drain system. Sediment had been discharged from the site into the storm drains and onto Sierra Highway. Sediment-laden water had been discharged into the Santa Clara River.
  - d. §A.11- (Maintenance, Inspection, and Repair): Site BMPs were not maintained and repaired at the site boundaries and storm drains. Sediment and gravel were observed on the street and next to the storm drain, due to broken sandbags.

9. On April 7, 2004, a Notice of Violation (NOV) was mailed to DR Horton. The NOV cited the Permit violations observed by the Regional Board staff during the March 9, 2004 inspection. The NOV stated that to come into compliance with the provisions of the Permit, DR Horton was required to:
  1. "Update your SWPPP to include measures to correct the concerns stated above. You shall submit a SWPPP that meets the standards outlined in Section A.1 through C.10 of the Permit, and that contains a schedule for implementation of the BMPs measures. By May 7, 2004, submit the updated SWPPP to Mr. Alex Alimohammadi."
  2. "Immediately implement erosion and sediment control BMPs and a BMP maintenance program. Include in your submittal pictures of BMPs implemented."
  3. "Submit a report explaining your sediment-laden storm water discharge into the Santa Clara River on March 5, 2004. You must include in your explanation an estimate of the volume discharged, pollutant levels in that discharge, and an analysis of environmental impacts. Submit the report to Mr. Alex Alimohammadi."
10. On May 7, 2004, Regional Board staff received a response to the NOV. The response included a copy of a complete SWPPP, and a report with pictures, indicating that all the required BMPs have been implemented.

#### **POTENTIAL CIVIL LIABILITY**

11. CWC § 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. CWC § 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
12. Pursuant to § 13385(c)(1) of the CWC, DR Horton is civilly liable for the sum of \$10,000 per day per violation of its General Permit. The total potential maximum civil liability assessment for the violations described herein is \$1,820,000 as set forth in the following chart.

**POTENTIAL MAXIMUM PENALTY**

<b><i>Penalty Category</i></b>	<b>Duration</b>	<b>Calculation</b>	<b>Total</b>
§A.6-(Erosion Control)	60 days (3/9/04-5/7/04)	60 days X 10,000/day	\$600,000
§A.8-(Sediment Control)	60 days (3/9/04-5/7/04)	60 days X 10,000/day	\$600,000
§A.11-(Maintenance, Inspection, and Repair)	60 days (3/9/04-5/7/04)	60 days X 10,000/day	\$600,000
§A.5.(b) 1 and A.5.(b) 2- (SWPPP Source Identification)	1 day (3/9/04)	1 day X 10,000/day	\$10,000
§A.5.(b) 4- SWPPP Source Identification)	1 day (3/9/04)	1 day X 10,000/day	\$10,000
<b>POTENTIAL MAXIMUM ACL</b>			<b>\$1,820,000</b>

13. Pursuant to of the CWC §13385(e), the Regional Board has considered the following factors in determining the amount of civil liability to be imposed:

a. Nature, circumstances, extent, and gravity of the violations:

DR Horton failed to develop and implement a SWPPP that identified all pollutant sources onsite, described and implemented BMPs with a time schedule, and provided a maintenance schedule for post-construction BMPs. Erosion and sediment controls to stabilize disturbed areas throughout the construction site were not implemented. BMPs implemented were not maintained and repaired. Therefore, a reduction from the maximum civil liability is not warranted.

b. Susceptibility of the discharge to cleanup or abatement:

The discharge of construction pollutants (i.e. sediment) is not easily cleaned-up once it has been released into the storm drain. Therefore, a reduction from the maximum civil liability is not warranted.

c. Degree of toxicity of the discharge:

The discharge of construction pollutants violates water quality objectives in the Basin Plan. Total Suspended Solids (TSS) were discharged into the Santa Clara River. Therefore, a reduction from the maximum civil liability may not be warranted.

d. Violator's ability to pay:

DR Horton has not provided sufficient information for the Regional Board to determine DR Horton's ability to pay. The Regional Board feels that the civil liability is correctly assessed; therefore, a reduction in the civil liability is not warranted.

e. Effect on Permittee's ability to continue its business:

DR Horton has not provided any information for the Regional Board to determine the impact that the proposed civil liability may have on the DR Horton's ability to continue its business.

f. Voluntary cleanup efforts undertaken:

When the BMPs installed by DR Horton failed to contain contaminated storm water runoff, DR Horton did not take any voluntary efforts to cleanup the pollutants discharged from its construction site. Therefore, a reduction from the maximum civil liability is not warranted.

g. Prior history of violations:

On February 18, 2003, there were BMP violations at the site, where DR Horton was the grading contractor. Subsequently, DR Horton stated that corrective actions were taken.

h. Degree of culpability:

DR Horton violated the terms of the General Permit by failing: (1) to develop a complete SWPPP to address the specific circumstances at their construction site, (2) to implement effective BMPs at their construction site to prevent sediment laden storm water from entering the storm drains and the receiving waters.

i. Economic benefit or savings:

To prepare a complete SWPPP for a construction site of this size and complexity costs an average of \$2,000. In addition, economic savings from not implementing sediment/erosion control BMPs and lack of maintenance on at least 15% of the 72 acres of disturbed land is estimated at \$6,480. The breakdown of this amount is as follows:

1. 15% of 72 acres = 10.8 acres;
2. (10.8 acres)x(\$600 per acre of implementation of BMPs) = \$6,480, and
3. \$6,480 is the amount that DR Horton saved by not implementing and maintaining effective BMPs at the construction site.

j. Other matters as justice may require: An additional matter to consider includes time spent by staff of the Regional Board in evaluating the incidents of violation and preparing this Complaint and related documents. The Regional Board charges a rate of \$70 per hour for staff cost recovery. With total staff time of approximately 20 hours, staff costs incurred by the Regional Board are estimated to total \$1,400:

$$20 \text{ hours} \times \$70 \text{ per hour} = \$1,400$$

14. After consideration of the factors stated in § 13385(e) of the CWC, and staff's lack of data to substantiate that fauna and flora exposed to the discharged pollutants were impaired, the Regional Board Executive Officer recommends that administrative civil liability be imposed by the Regional Board in the amount of \$14,880 which includes the following:
- a. Penalty of \$2,000 for not developing and implementing a complete SWPPP;
  - b. Penalty of \$6,480 for not implementing and not maintaining effective BMPs;
  - c. CWC Section 13385 penalty of \$5,000 for 03/09/04 violation; and
  - d. Reimbursement of \$1,400 in Regional Board staff costs (20 hours x \$70/hour).

#### RECOMMENDED CIVIL LIABILITY

<i>Penalty Category</i>	<i>Calculation</i>	<i>Total</i>
<i>Avoided cost SWPPP- Section A</i>	\$2,000 for not developing and implementing a complete SWPPP for the entire 78.9-acre site (72 acres disturbed area).	\$2,000
<i>Avoided cost-Sections A.6, A.8., and A.11</i>	§A.6-(Erosion Control): for not implementing effective erosion control BMPs  §A.8-(Sediment Control): for not implementing effective sediment control BMPs  §A.11(Maintenance Inspection and Repair): for not maintaining the BMPs  The percentage of the total disturbed area where effective BMPs were not implemented and were not maintained is estimated to be 15%.  (10.8 acres)x(\$600/acres)	\$6,480

<i><b>Penalty Category</b></i>	<b>Calculation</b>	<b>Total</b>
<i>Penalty</i>	3/9/04 violation – SECTION 13385	\$5,000
<i><b>Reimbursement for Staff Costs</b></i>	Staff expended 20 hours x \$70/hour	\$1,400
<b>TOTAL RECOMMENDED PENALTY</b>		<b>\$14,880</b>

15. DR Horton may waive its right to a hearing. Should it choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on July 26, 2004. If the hearing is waived, in order to satisfy the civil liability, a check in the amount of \$14,880 (Payable to the State Water Resources Control Board-Storm Water Account) shall accompany the signed waiver.
16. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

If DR Horton has any questions, please contact Ejigu Solomon at (213) 620-2237 or Alex Alimohammadi at (213) 620-2243.

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Date

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Dennis A. Dickerson  
Executive Officer

## **WAIVER OF THE RIGHT TO A HEARING**

By signing below and returning this Waiver, I hereby waive the right of DR Horton to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2004-0050 (Complaint) issued by the Regional Board Executive Officer. DR Horton understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes

DR Horton elects to pay the civil liability in the following manner:

Enclosed herewith in full payment of the civil liability is a \$14,880 check payable to "State Water Resources Control Board Cleanup and Abatement Account."

DR Horton understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and imposition of, and the amount of, civil liability imposed. DR Horton also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due in thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind DR Horton in the making and giving of this Waiver.

DR Horton

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signed name)

\_\_\_\_\_  
(Printed or typed name)

Position: \_\_\_\_\_